

MINUTES

MONTANA SENATE 57th LEGISLATURE - REGULAR SESSION COMMITTEE ON ENERGY AND TELECOMMUNICATIONS

Call to Order: By **CHAIRMAN MACK COLE**, on April 2, 2001 at 8:00 A.M., in Room 317-A Capitol.

ROLL CALL

Members Present:

Sen. Mack Cole, Chairman (R)
Sen. Royal Johnson, Vice Chairman (R)
Sen. Steve Doherty (D)
Sen. Alvin Ellis Jr. (R)
Sen. Mike Halligan (D)
Sen. Bea McCarthy (D)
Sen. Walter McNutt (R)
Sen. Don Ryan (D)
Sen. Corey Stapleton (R)
Sen. Mike Taylor (R)
Sen. Tom Zook (R)

Members Excused: None.

Members Absent: None.

Staff Present: Todd Everts, Legislative Branch
Marion Mood, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted:	HB 474, 3/30/2001
	HB 632, 3/30/2001
	HB 643, 3/30/2001
	HB 645, 3/30/2001
	HB 646, 3/30/2001
	HB 647, 3/30/2001

Executive Action: None

HEARING ON HB 474

Sponsor: REP. PAUL SLITER, HD 76, SOMERS

Proponents: Tom Daubert, Ash Grove Cement Company
Darrell Holzer, MT AFL-CIO
Gene Fenderson, MJH & HC

Opponents: Jerome Anderson, PP&L Montana

Opening Statement by Sponsor:

REP. PAUL SLITER, HD 76, SOMERS, opened by saying that HB 474, which has been changed and amended since its introduction, creates a windfall profits tax. The tax is imposed on the profits derived from the sale of electricity generated in Montana, for any portion over the base price of 5 cents per kilowatt hour, and the tax rate is equal to 90% of the windfall profits. The revenue would be deposited into a special revenue fund, and be used by the PSC to purchase or buy down the price of electricity as well as fund the low-income energy assistance program. He suggested the committee might want to adjust the 5-cent base price, given the instability of today's market. He also felt an exemption might be written into the bill with regards to federally generated power, citing as an example the Bonneville Power Administration. He pointed to Sections (3) through (7) and explained that the Board of Investments will have the ability to invest in new power generation projects in the state, such as the newly announced gas-fired generators that NorthWestern is planning.

Proponents' Testimony:

Tom Daubert, Ash Grove Cement Co., asserted that this was one of the large industrials who supported deregulation, and enjoyed quite a bit of savings during the first year under a new power contract, only to lose it and more in a single month after the initial contract expired. The decision to shut down temporarily was made a few months later because the company could not afford the price of electricity. He proclaimed his support for this bill and others for implementing measures which would provide relief from the sky-rocketing electric rates.

Darrell Holzer, MT AFL-CIO, also rose in support of HB 474, saying he was intrigued by any piece of the puzzle that might help improve the current situation, and welcomed any proposal which would bring forth much needed new generation.

Gene Fenderson, MT Joint Heavy and Highway Committee, stood in support of HB 474 and hoped the 5-cent rate would become reality.

Opponents' Testimony:

Jerome Anderson, PPL Montana, expressed his concern with the proposal to impose an excess profit tax on power generated in Montana, and felt this was discriminatory and violated property rights. He also saw a problem for a generator selling electricity in Montana under contract, having to augment power generated in the state with power bought in the spot market. PPL Montana was one of those companies, having to pay between \$100 and \$400 per megawatt hour without any hope of being compensated. He felt HB 474 was punitive and singled out PPL Montana who had chosen to make a significant investment in Montana for years to come.

Questions from Committee Members and Responses:

SEN. ROYAL JOHNSON asked if there were any exemption clauses for other generators of power in Montana. **Jerome Anderson** replied there were none. **SEN. JOHNSON** wondered if the generators who own Colstrip 4 were included under the provisions of this bill. **Mr. Anderson** confirmed this.

SEN. JOHNSON asked, aside from the 90 union workers at Ash Grove, how many people this bill would affect. **Tom Daubert** replied that he had referred to all of Montana's workforce, not only the employees of Ash Grove, in his testimony.

SEN. DON RYAN asked the sponsor if different power generation methods, such as gas or coal fired generation, were considered when the threshold of \$50 per megawatt hour was set. **REP. SLITER** responded that this price was arrived at arbitrarily. **SEN. RYAN** wondered why there was no termination date in HB 474. **REP. SLITER** explained that the termination date was eliminated with the amendments. He felt the market would stabilize over a period of time, and the windfall profits tax might not be an issue five years from now because, with increased competition, prices would come down. He left it up to the committee, though, to add a termination date. **SEN. RYAN** inquired if this bill would not achieve the opposite and be a dis-incentive to new generation if prices did not come down from the \$50 level, because of the cost involved in building a new plant. **REP. SLITER** stated he had thought about an exemption for new generation but felt HB 474 did not violate any commerce clause in statute. He maintained he would be in favor of such an amendment as long as it did not raise any legal questions.

SEN. JOHNSON referred to page 5, line 6, and asked if the money in the account would be given to the distributing power company.

REP. SLITER explained that the money would be used to contract for power. If the PSC would enter into a contract with the default supplier, for example, the money in this special revenue account could be used to buy down the price of the contract, lowering the cost to the end consumer. **SEN. JOHNSON** wanted assurance that any power company would be entitled to this, and **REP. SLITER** clarified it was subject to the PSC entering into the contract with them, and it would not necessarily be the default supplier. **SEN. JOHNSON** referred to Section (3) and asked if this provided the Board of Investments the ability to invest in generating plants. **REP. SLITER** confirmed this. **SEN. JOHNSON** wondered if the board was prohibited from doing so now, and **REP. SLITER** replied he did not know.

SEN. TOM ZOOK wanted to be sure that this did not apply to new generation. **REP. SLITER** thought that it did, but felt that new generation could be exempted from this taxation if it could be worked out within the legal constraints. **SEN. ZOOK** questioned the fairness of exempting one company in addition to the investment made to bring it online, and penalizing another. **REP. SLITER** asserted that he was mainly concerned with fairness to the consumer, pointing to the windfall profits enjoyed by certain companies and, at the same time, dispelled the assumption that this was directed solely at PPL Montana.

SEN. MIKE TAYLOR questioned the time frame in Section (7), and **REP. SLITER** explained that the 15 to 25 year time frame was added through amendments but that he was not convinced it was the way to go, and would leave it up to the committee to adjust it. He maintained that because of the complexity of the issue, this bill was a "work in progress" and urged the members to use whatever tools were needed to make it a better bill.

SEN. ALVIN ELLIS understood that there were several companies who owned substantial interest in power generation in Montana besides PPL, and wondered what portion of that power was being sold on a market based price versus a regulated price. **REP. SLITER** thought that companies like Pacific Corp., Avista and Puget were generating power for their own use and selling it on the West Coast. He felt HB 474 would affect them depending on the price they charged, but if they sold it at cost, it would not. **SEN. ELLIS** asked the same question of **Pat Corcoran, MPC**, who was not sure but thought it would be closer to being a cost based rate, except for a potential, albeit unlikely, surplus. He felt that power was being used to serve their existing loads at the current rate.

SEN. ELLIS inquired about deregulation in California, namely that the providers of power had to divorce themselves from the generators. **Pat Corcoran** confirmed this but stated that the power facilities located in Montana are serving utilities located in the Pacific Northwest, Oregon and Washington, primarily, and specifically their regional loads, and not in California.

{Tape : 1; Side : B}

SEN. MACK COLE inquired if the attached fiscal note had been revised as far as the general fund impact was concerned. **REP. SLITER** replied that now there was a .50 FTE for each year of the biennium. The general fund impact was due to administrative expenses.

Closing by Sponsor:

REP. SLITER closed on HB 474, saying this and other energy bills were works in progress, and he was open to anticipated amendments.

HEARING ON HB 632

Sponsor: **REP. DOUG MOOD, HD 58, SEELEY LAKE**

Proponents: **Michael Uda, Ash Grove Cement Co.**
Pat Corcoran, MPC
Allan Payne, MRI, Ash Grove Cement Co.
Harley Harris, MRI
John Shaw, ASARCO
Eric L. Schindler, American Chemet Corp.
Greg Stricker, MRI
Patrick Judge, MEIC
Matthew Loew, MontPIRG
John Bloomquist, MT Stock Growers
Paul Wyche, NorthWestern Corp.
Barry Hederich, self
Robert Hanson, MT Farm Bureau
John Youngberg, MT Farm Bureau
Tom Daubert, Ash Grove Cement Co.
Julie Ippolito, HRDC, Dir. Assn.
Mike Murphy, MT Water Resources Assn.
Patti Keebler, MT AFL-CIO
Kim Liles, Pulp & Paper Workers, Smurfit- Stone
Container
Debbie Smith, Natural Resources Defense Council
Mark Ogle, MT School Board Assn.

Steven Walsh, MRI
Dale Malyevac, MRI
Ron Benton, MRI
Gene Fenderson, MJH&HC
Cary Hegreberg, Montana Wood Products Assn.
Clyde Dailey, AARP
Don Serba, Pulp & Paper Workers
Steve Lzehura, MRI

Opponents: Jerome Anderson, PPL Montana

Opening Statement by Sponsor:

REP. DOUG MOOD, HD 58, SEELEY LAKE, stated that HB 632 asserts the Public Service Commission's continued authority to control the price of electricity as per SB 390, and it establishes the creation of lifeline rates. These are defined on page 5 of the bill as being temporary emergency rates adopted for the purpose of allowing large customers to obtain an affordable supply of electricity until the commission establishes a just and reasonable rate pursuant to statute 69-8-403(1). He pointed to page 12, lines 18 through 21, which further define lifeline rates as being no more than 150% of the current rate, or 3.9 cents. The bill also asks the PSC to establish "just and reasonable" rates by November 30, 2001; these rates are defined on page 8, lines 16 through 25. He asserted the term "just and reasonable" was used nationwide in the industry, and was well-defined within statute. He went on to say that this section of HB 632 contained important language offering protection to the default supplier and repeated that the issue was generation of power without squeezing the default supplier into a situation where they would be losing money.

Proponents' Testimony:

Michael Uda, Ash Grove Cement Co., submitted **EXHIBIT (ens74a01)**, a synopsis of HB 632, and offered to walk the committee through key provisions of the bill as per Exhibit (1). He clarified that within the time lines, the word "interim" as applied to just and reasonable rates was stricken in an amendment. Having done extensive research, he felt that with regards to the judicial review page, the takings/retro-activity issues had no merit.

Pat Corcoran, MPC, stated that they support HB 632 conditionally. He did not agree with the sponsor's assertion that the provisions in HB 632 did not hurt the power suppliers. He felt this bill could become part of the package of energy bills in the current legislature aimed at bringing affordable and reliable energy to

the consumer, but firmly believed full cost recovery language for the default supplier was a necessary amendment, especially in light of the elimination of SB 243. He proclaimed that MPC could not be the default supplier if it was unable to pay its bills, in view of the cost of power it was required to purchase on behalf of its consumers. He felt that the bill needed to be amended to tie the rates which retail consumers pay, including the lifeline rates, to the cost of electricity. Current law has a provision which says that if the transition period is extended, the commission would ensure costs are fully recovered by the default supplier; he said HB 632 eliminates that language as per Section (3), subsection (3), and he was adamant about this language being amended back into the bill. He explained that HB 632 was built around the concept of lifeline rates, and repeated that the lifeline rate could not exceed 150% of the supply component of current rates, making it 4.3 cents, and it had to be established within 30 days after passage of this bill. If the price of electricity is 10 cents, a difference of 5.7 cents is produced, making for a deficit of \$69 million on an annual basis for a company like MPC whose annual net income is \$40 million. He asserted that if MPC is put at any risk of not being able to recover this cost of \$69 million, it would suffer severe financial consequences; they would not be able to borrow money to cover their cost and move closer to the situation California is experiencing. He admitted the current problems had to be remedied for all consumers, and wondered how it would be determined which of the large industrial customers would be allowed to operate under this lifeline concept, given their different financial make-up. He felt they should be required to break even as part of this process, and should not be allowed to profit from it; the purpose of these lifeline rates was to get them up and running. He maintained that if this concept goes forward, the state needed to consider backing the cost of the lifeline rate for the short-term because it would be difficult for the default supplier to carry \$69 million for a year.

Allan Payne, MRI and Ash Grove, submitted **EXHIBIT (ens74a02)** which dealt with the issue of preemption. He stated that the interstate wholesale rates are preempted by federal law but not the retail rates addressed by HB 632, affirming that the preemption issue with respect to HB 632 was a "red herring". Since the bill set standards for the determination of the just and reasonable rate, adoption of HB 632 would lessen any chance of preemption.

Harley Harris, MRI and Ash Grove, stated his task was to go through the arguments that had been raised with respect to HB 632 effectuating the taking of private property. Some utilities, PPL Montana in particular, made an investment in Montana, expecting that the property they were purchasing would be released from the

statutory obligation to provide service at just and reasonable rates, and if they were not allowed to do so, that expectancy, or property, would be "taken". The PSC made clear, and this is implicit in HB 632, that the 1997 restructuring law did not release assets from rate-based, and that would not occur unless and until the PSC issued its final order approving MPC's transition plan. If this was moved into the context of the classic takings law, the first issue which needed to be addressed was whether there was a property right at issue. Public utilities did not have a constitutionally protected property right to be free of service obligations, and there was none for a maximum profit or market price level. He went on to say that what the constitutions does with regards to price regulation, is to protect utilities who have service obligations from what is called "confiscatory" rates while not guaranteeing them the highest possible profits. Just and reasonable rates are those which allow a company to operate successfully, to maintain financial integrity, and compensate its investors. He stressed that HB 632 did not effectuate the taking of property or set a new rate; under the provisions of this bill, the PSC has the authority to set rates taking into account all of these constitutional considerations and to avoid issues of taking.

John Shaw, Plant Manager, ASARCO, told the committee that while mainly market prices led to the shut down of his company, energy prices certainly played a role. They hoped to be able to resume operations once the market changed, but were fully aware this would not be possible unless there were stable and long-term electric rates. He felt that the PSC was the appropriate and experienced forum to provide effective means for promoting short-term stabilization, and long-term just and reasonable rates. His written testimony, **EXHIBIT(ens74a17)**, was handed to the secretary at the end of the hearing.

{Tape : 2; Side : A}

Eric L. Schindler, American Chemet Corp., submitted written testimony, **EXHIBIT(ens74a03)**.

Greg Stricker, MRI, stated that his company was forced to suspend operations in July 2000 due to skyrocketing electricity prices, laying off over 340 workers, and due to continuing high prices have been unable to resume operations. He proclaimed that his company had explored every conceivable option in trying to obtain reasonably priced power, and, given the results of their efforts over the past nine months, saw no other solution than that proposed in HB 632. It strengthened existing legislative control over Montana's electricity supply and ensured that Montana's generation was obligated to Montanans first. He pointed to MPC's announcement last Friday that their prices for electricity needed

to supply Montana power customers were two to three times that being paid currently, and no supplier was going to provide affordable power for industrial customers immediately. Furthermore, to illustrate how urgently HB 632 was needed, he informed the committee of the financial statement filed by PPL Montana with the SEC, showing a net income of almost \$70 million for the last quarter of 2000.

Patrick Judge, MEIC, also rose in support of HB 632, saying that the MEIC understood the benefits it extended to Montana's small and large consumers, and wanted to be sure MPC would be able to recover all legitimate costs. From an environmental standpoint, he welcomed the fact that Montana's customers would be reconnected to existing Montana generation resources at affordable prices. He suggested considering an amendment, however, to include an alternative power source, such as wind, solar, or geothermal.

Matthew Leow, MontPIRG, voiced his support for HB 632 because it promoted competition, allowed utility companies to collect a rate which covered their cost and guaranteed a reasonable profit, and provided a fair guideline for setting rates. He cautioned that PPL Montana would oppose this bill because in their minds, passing legislation which controls rates would send a chilling message to business. The chilling effect, though, was the lack of affordable electric rates, and he saw businesses in Montana as being targets of profiteering. He felt it was the duty of this legislature to protect the people of Montana and reaffirm the PSC's authority.

John Bloomquist, Montana Stock Growers' Assn., felt that the current energy crisis not only affected the large industrials but also a number of large irrigators. He welcomed HB 632 as being consistent with recommendations contained in SB 390, one being the regulatory backstop should true market competition not occur by the time the transition order was issued, and reassertion of PSC's authority until such time that the final transition order was issued. He asserted this proposal was a bridge between now and the time when market competition and supply got online.

Paul Wyche, NorthWestern Corp., submitted written testimony, **EXHIBIT** (ens74a04).

Barry Hederich, self, stated that as an agricultural producer, he was also concerned with the current energy problems and solicited information from other producers in his area who are MPC customers. He was startled to find that current rates ranged from \$37.20 to \$83.11 per MW hour, averaging \$52; the average irrigation cost per acre was \$32. He used three different

commodities to calculate the current return per acre, and came up with a loss of \$27 for irrigated wheat and \$93 for barley, and a profit of \$50 for alfalfa. This meant that any rate increase would have a significant impact on these producers, and will result in a reduction of irrigated acres, abandonment of some, a loss of business transactions and, ultimately, a loss of tax revenue to both the county and state. He proclaimed that initially, a stopgap measure was needed to provide affordable power to all citizens until a long-range energy policy ensuring affordable power in the future was established, and felt that HB 632 accomplished that.

Robert Hanson, MT Farm Bureau Federation, stated that his family-owned cattle ranch operation has been in business near White Sulphur Springs since 1881, and the proposed rate increases would be devastating to the ranch as well as to the economy of the small town. He elaborated that almost all of the businesses on Main Street were up for sale, and that the people were looking to this legislature to help find a solution.

John Youngberg, MT Farm Bureau Federation, voiced some of the same concerns, adding that he felt PPL Montana was not entirely forthcoming with regards to how much power they had available and how much they had to purchase on the open market.

Tom Daubert, Ash Grove Cement Co., stressed the importance of HB 632 to the company and everyone in Montana, not only because of the taxes paid but also in light of the money spent on goods and services, which in turn kept the supplying businesses in operation. They had envisioned some problems when the restructuring laws were passed in 1997, and that was why an extension of the transition period was granted. He reminded the committee of the pledge MPC made at that time, that there would be no rate increase throughout the transition and that there was a back-up if a competitively priced marketplace had not emerged by now, or a year from now. He felt that PPL should have been aware that this could be the circumstance under which they purchased the plants; thus, he believed the prospects for a claim by PPL Montana that this bill runs afoul of their legal expectations are poor. He stressed the importance of this bill building directly on SB 390; it enhanced the direction the PSC received from the legislature; it does insulate itself from the takings claim by the power companies because it factored in market consideration in PSC's determining rates; it is not punitive; puts some industrial customers back to work and prevents others from having to shut down; and it protects all Montanans from the domino effect. Because the power companies are very concerned with the concept of the lifeline rates, he felt an amendment could be added which would allow them to cover any corrections between the lifeline rates and the actual costs

later on, to be paid off over time. He urged support for HB 632, saying this was the only bill left which would keep Montana's economy alive during the transition.

Julie Ippolito, HRDC, Dir. Assn., also rose in support of HB 632, saying it presented a balanced and reasonable solution.

{Tape : 2; Side : B}

Mike Murphy, MT Water Resources Assn., voiced his organization's support for HB 632, considering that there had been a significant impact on the state's agricultural industry as well as Montana's economy as a whole, and he felt this bill was the tool to encourage new generation and provide economic stability during the transition.

Patti Keebler, MT AFL-CIO, rose in support of HB 632 for the aforementioned reasons, saying that it was part of the mix to solve the energy crisis.

Kim Liles, Pulp & Paper Workers' Resource Council, Smurfit-Stone Container, informed the committee that this day, another paper machine at his plant was being shut down, reducing the work force by another 140 people. He admitted there were other factors, too, but that they could not operate economically at the present tariff. The common consensus was that it would be at least two years before a long-term solution could be found, and he lauded **REP. MOOD** for bringing this bill forward because Montana did not have two years; a solution was needed now.

Debbie Smith, Natural Resources Defense Council, concurred with previous testimony but said their support was contingent upon adding language with regards to development of alternative or "green" power, as well as additional clarification to ensure that the default supplier would not be burdened with added costs because of HB 632. She also asked that this bill needed to be considered in tandem with HB 474. She stated that the large industrials who went back on the system should not be allowed to go off; but if they did, they were responsible for the cost. In closing, she submitted an amendment request, **EXHIBIT (ens74a05)**.

Mark Ogle, MT School Board Association, stated that Montana's school districts needed a reliable power supply at affordable and stable rates as well as continued support of the local tax base, provided by the many industrial and agricultural entities who testified in favor of HB 632.

Steven Walsh, VP, MRI, stated that he had brought with him a number of his co-workers because after this hearing, they would be presenting the Department of Revenue with the mine's last

license tax payment in the amount of \$902,000, representing about 6 months of production from the year 2000; he added that 25% of that amount would revert back to Silver Bow county. He appreciated both MPC and Northwestern Corp. supporting HB 632, albeit with proposed amendments, and asked the committee to take into account the importance of lifeline rates and cost recovery issues when considering the two companies' amendment proposals.

Dale Malyevac, MRI, one of the few employees left at MRI, voiced his support for HB 632, saying that he represented not only the former 340 MRI employees but all of the state's citizens as well. He agreed with previous testimony, imploring that if a solution was not found, Montana's economy would be destroyed, and stressed that the state needed to generate its own power.

Rod Benton, MRI, proclaimed that a long-term suspension of their operation would be devastating to Silver Bow county and the rest of the state, pointing to **Mr. Walsh's** testimony regarding the last tax payment. He cited the additional loss of proceeds and payroll taxes, decreased property tax, as well as the loss of money spent on supplies, which amounted to 500 million dollars since the mine's start-up in 1986, over half of which was spent in Montana. He was certain that passage of HB 632 would allow MRI to resume operations and once again contribute to the state's economy.

Gene Fenderson, MJH & HC, also stood in support of HB 632, saying that it brought balance to all parties involved and felt that the default supplier should be part of the mix and shoulder some of the responsibility.

Cary Hegreberg, Montana Wood Products Association, proclaimed that it was apparent from testimony that consumers large and small were drowning, with some of them going down for the third time, and asked the committee to throw them the proverbial life-ring with passage of HB 632. With regards to the "green power choice", he suggested the committee also consider bio-mass such as wood fiber as part of a renewable green power choice.

Clyde Dailey, Associate State Director, AARP, proclaimed his support for HB 632 because he felt it had the highest potential of keeping people in business. He voiced some concern with the time line being left at 2004, and suggested the PSC be given more authority in establishing a workable time line.

Don Serba, Pulp & Paper Workers Resource Council, repeated **Kim Liles'** take on the dismal outlook for the paper industry. He stressed the need to address all issues concerning the energy crisis, such as development, generation, and lifeline programs to

keep industry working in Montana because they were important to the economic survival of the state and its citizens. He applauded MontPIRG and the MEIC for their support of HB 632, especially in light of the fact that just recently, both organizations were proponents for removal of four dams along the Snake River which represented a loss of 3,000 megawatts of capacity in the Northwest. He hoped that people were starting to realize how serious this issue was, and felt MontPIRG's and MEIC's support was a good indication that they, too, realized how serious this was for the workers and businesses of the state.

Steve Lzehura, MRI, started his testimony by saying that in 1995, MRI was one of the lowest cost producers in the world, because of the quality of their employees. They never imagined they would have to compete in the world market by paying up to three times the old rate for power, and putting over 340 people out of work. He stressed that people are Montana's most important resource, and they were in dire need of help.

Opponents' Testimony:

Jerome Anderson, PPL Montana, voiced concern over the non-existence of a termination date for the PSC's authority to regulate electricity prices. He reiterated the various provisions of HB 632 and said that PPL recognized that Montana had full authority to regulate intra-state end-use sales of electricity, such as the retail price charged to customers by the default supplier. He charged, though, that the bill was not clear about limits with regards to what it attempted to do, and because of this lack of clarity, strayed beyond the state's appropriate authority and raised grave legal and constitutional concerns. He was also concerned with the bill's perceived invasion and violation of the Federal Energy Regulatory Commission's jurisdiction, whereby the commission was given the exclusive authority over the sale of electric energy to wholesalers, including the rates, terms, conditions and contracts for the purchase and sale of electric energy to wholesalers, specifically how this applied to PPL Montana supplying MPC. He contended that it was PPL Montana's position that it was not the successor of MPC's public utility obligations; they merely purchased certain generating assets and related transmission facilities. He went on to say that under the supremacy clause of the U.S. Constitution, the state obligation must give way to the overriding federal obligation. He also pointed to the issue of the potential taking of property with regards to his client, PPL Montana, specifically the proposed default supply and compensation arrangement. He asserted there would be an adverse economic impact on his client's holdings, and the proposed regulation would interfere with his client's investment backed

expectations. Thirdly, HB 632 did not reflect an appropriate balance between the interest of PPL Montana as the private property owner and the state's need to protect the public interest, and he felt strongly about his client being legally entitled to just compensation by the state of Montana for such taking of property. Under their agreement, PPL Montana's first obligation was to supply power to MPC, and at times, has been unable to meet the amount required by MPC, and contracted with other suppliers. He claimed that since purchasing MPC's facilities in 1999, PPL Montana has sold over 80% of the generation produced at their facilities to MPC; 18 % of the remaining 20% was sold to other marketers in the region who in turn sold energy at retail to some of the state's largest consumers and employers, such as CFAC and Plum Creek Timber. In closing, he stated that passage of HB 632 would send a chilling message to businesses considering locating in Montana, and it would not go unnoticed in the financial markets, aside from having potential legal ramifications.

Questions from Committee Members and Responses:

SEN. STEVE DOHERTY asked for clarification from both MPC and NorthWestern about their respective positions, whether they were proponents or opponents of HB 632, and asked if they would oppose the bill without amendments.

Pat Corcoran, MPC stated that the committee would be provided amendments as soon as they were finalized, and he repeated that MPC's support for the bill was contingent upon their adoption.

{Tape : 3; Side : A}

Paul Wyche, Northwestern Corp., responded that this bill was a serious effort to alleviate the problems the state was facing, and his organization would like to support it with the amendments they were going to bring forth.

SEN. DOHERTY then asked what the amendments proposed by the power companies would do to HB 632. **Mike Uda** replied that it had always been the intent that industrial customers would take on the responsibility, and that it would not fall on the default supplier. Any costs associated with the lifeline rates would be extended over time, and a related amendment would be accepted.

SEN. DOHERTY wondered what he thought of comments made by **Debbie Smith** that if the large industrials were to get back on the system, they would not be allowed to get off; if they did decide to leave, they would have to bear the cost. **Mike Uda** responded that the goal was to preserve SB 390 in getting back to a competitive marketplace; SB 474 by **REP. SLITER** said that those companies could not leave which created a novel situation. The customers currently under the default tariff could exercise

choice but those coming back in cannot, which, in essence, is re-regulation. With regards to exit fees, those industrial customers who currently cannot afford to buy electricity should be willing to take those costs on as a condition of coming back onto the system.

SEN. DON RYAN asked what the sponsor's intent was with regards to lines 7 and 8 in the title. **REP. MOOD** explained the intention was to give the PSC some latitude in adjusting rates upward between now and July 1, 2002; how they will go about it would be pure speculation on his part because the intent was to leave it up to the PSC, but it was certain rates would go up. He suggested that an escrow account could be created to help the default supplier if he had to buy power on the spot market until this crisis was resolved; speculation was that prices would normalize with increased competition within three or four years. In the event that PPL Montana continued to sell power at the just and reasonable rate, and prices started to go down, that pool of money could be used to make them whole. **SEN. RYAN** referred to the termination date of December 31, 2001, and **REP. MOOD** explained that applied to the tax credit only, as outlined on page 2. **SEN. RYAN** felt that "until a final transition plan is approved" was open-ended, and asked how long the PSC could conceivably take. **REP. MOOD** replied that statement cloned language currently in law (SB 390); he explained that at the time SB 390 was enacted into law, there was no anticipation on the part of anyone including MPC who was a strong backer of the restructuring and deregulation measure, that we would be in this current situation. He felt this was a temporary situation, and that language would allow the PSC to issue a final order "approving, modifying, or denying the transition plan before nine months after a public utility files the plan", as per 69-8-202 of statute.

SEN. MIKE TAYLOR asked for clarification of the statement that this bill would cost MPC 69 million dollars. **Pat Corcoran** explained this was an annual figure, based on the assumption that the lifeline rate would be set at 4.3 cents, with a 10 cent cost per kilowatt hour, and applied to an average 200 megawatt industrial load. **SEN. TAYLOR** wondered why **Mr. Corcoran** assumed a cost of 10 cents when recent bids reportedly were between 5 cents and 7 cents. **Pat Corcoran** replied that the prices on these bids represented long-term contracts, with 7.5 cents for 5 years, and 6.5 cents for 10; these bids would not start until July 1, 2002. **SEN. TAYLOR** asked him to define "cost". In his response, **Pat Corcoran** separated the gas and electric utility portion of MPC because that was who he represented before the committee, saying that while they owned the pipes and wires and there were costs associated with these assets, the cost referred to here was the

expense of power supply since they did no longer have generating facilities to serve their consumers. **SEN. TAYLOR** asked the same question of **Paul Wyche** who answered that there were two levels of cost; one being the pipes and wires, and all the things necessary to see that people have a supply of power; and under current provisions, they are allowed a profit from that. In their role as default supplier, they do not receive a profit, and the actual expense of soliciting RFP's and providing the energy to Montana was the cost referred to here, not the transmission; assuming it cost the company 4 cents to buy power, this would be the cost that is passed on.

SEN. ALVIN ELLIS asked for confirmation that PPL Montana sold about 18% of its power to customers other than MPC's. **Jerome Anderson** recalled that the company sold 80% to MPC, and about 18% to other suppliers who in turn supplied customers in Montana. **SEN. ELLIS** asked if those figures included power they had to buy on the spot market. **Mr. Anderson** confirmed this. **SEN. ELLIS** then asked what percentage of the power brokered was purchased from another generator. **Mr. Anderson** did not know those numbers. **SEN. ELLIS** repeated his question, thinking the witness had misunderstood. **Mr. Anderson** admitted he did not know but would try and submit those numbers later.

SEN. MIKE HALLIGAN asked **Pat Corcoran** to go over the numbers again and show how he arrived at the 69 million dollar figure. **Mr. Corcoran** complied, repeating that on average, the charge for large industrial customers is 2.9 cents. **SEN. HALLIGAN** asked if the price to the residential consumer was about 2.25 cents. **Mr. Corcoran** replied that it was roughly 2.7 cents, and he stressed that the 2.65 cent buy-back contract with PPL Montana was only a portion of the total supply rate for all of MPC's customers.

SEN. HALLIGAN asked if there was an attorney present for the PSC, and **Will Rosequist, PSC**, stepped up to the podium. **SEN. HALLIGAN** inquired what the commission's thoughts were on the takings and supremacy clause issues. **Will Rosequist** replied that all of these federal issues were of concern to the PSC, and their attorneys were taking a close look at HB 632. He stated that any changes to the law made them a bit nervous. While it was intended to clarify the commission's authority, if used by the PSC, could get them into further legal trouble because of retro-activity issues. He went on to say that some clarification was needed with regards to the lifeline rates, and felt the commission had to succeed in its assertion of authority under current law before it could go forward with the provisions in this bill. **SEN. HALLIGAN** wanted to know if the PSC could have implemented the lifeline concept under existing law. **Will**

Rosequist responded that when the commission initially asserted its authority under the law, they were focused on a time period between 2002 and 2004, and on those customers for whom they had the authority to extend the transition period, these being customers with loads under 1,000 kilowatt. He pointed out that the lifeline rates applied to industrial customers over 1,000 kilowatt, and said he was not sure if the PSC's initial action would encompass them. The question arose, then, if the commission had the authority to provide any interim relief to those customers, and that would be consistent with the lifeline rate concept. **SEN. HALLIGAN** stated he would like to see any legal memos pertaining to the constitutional questions. **Will Rosequist** was open to that suggestion.

SEN. HALLIGAN inquired about the automatic subsidy to any industrial customer with regards to their ability to pay. **REP. MOOD** answered that the original bill addressed a customer's ability to pay, but that he thought it was inappropriate and changed that language to reflect one lifeline rate.

SEN. HALLIGAN referred to **Mr. Anderson's** claims with regards to the supremacy and preemption issues and asked why he was allegedly wrong. **Mike Uda** maintained that **Mr. Anderson** was absolutely wrong, and substantiated his claim as follows: under the Federal Power Act, FERC was given authority for interstate sales of electricity because there had been an attempt by the states to regulate it from which they were prohibited by the Interstate Commerce Clause. In an attempt to regulate these interstate transactions, Congress adopted the Federal Power Act in 1935, by which the states could regulate the interstate business but were prohibited from interfering with the prerogatives of the state.

{Tape : 3; Side : B}

He proceeded to read from a brief from the California Public Utility's Commission which says that there are three prerequisites for the final rate doctrine to apply, namely that the rates must have been filed with FERC, which these have not been; the rates must have been set by FERC, which they have not; and lastly, the rates must have been found to be just and reasonable by FERC, which also has not happened here. In fact, he continued, the only thing FERC has said about current wholesale markets was that \$150 or more per megawatt hour is not just and reasonable. Currently, power is unregulated at the federal level, and now it is alleged that it cannot be regulated at the retail level by the state. HB 632, then, is attempting to connect the resources and the loads at a retail level, reaffirm that the PSC has the authority to do that, and provide them with the mechanisms to deal with the economic consequences.

He added that the concerns expressed by MPC and the NorthWestern Corp. over the 69 million dollars are only founded if PPL Montana is preempted, and he believed that until a final transition order is issued by the PSC, they retain jurisdiction over those assets; they have not been released from rate base. The commission's only concern dealt with further changes in the law in terms of retro-activity, and he offered to share a copy of an extensive analysis done by his law firm.

Note: This was turned in during the sponsor's closing, as **EXHIBIT (ens74a06)**. In view of this, he asked, how could there be any sudden expectations which could be interfered with through HB 632; the answer had to be no.

SEN. HALLIGAN asked what the basis for denying a rate application was, if not market driven. **Mike Uda** explained that under current law, rates must be just and reasonable, and any rate that is not, is declared null and void. **SEN. HALLIGAN** then asked him to explain the takings issue again. **Mike Uda** gave a brief history of Supreme Court rulings, which resulted in the opinion that as long as the utilities recover their costs plus a reasonable rate of return, they do not have a takings argument. He pointed out that, in the case of PPL Montana, their expectation was a price range of \$25 to \$30 per MW hour; current prices on the spot market are in the \$200/MW hour range. As a result, their earnings report for the first three quarters of 2000 showed a profit of \$18 million; the last quarter, \$69 million. He addressed **SEN. ELLIS's** question with regards to how much power are they buying in the spot market, saying obviously not enough to offset that kind of a profit.

SEN. JOHNSON was curious how many of the proponents would support this bill without any amendments or changes, since so many of them had proposed them, and asked for a show of hands. (A definite majority raised their hands). **SEN. JOHNSON** then asked how MPC went about determining the rates for power that might be purchased, if it was prompted by the PSC's order No. 6314. **Will Rosquist** answered he could only speculate that they went out for bids in response to the plan required to be filed with the PSC. **SEN. JOHNSON** inquired if he thought that the PSC had all the authority they needed, without this bill or any others, to proceed with trying to find a power source and reasonable rates. **Mr. Rosquist** referred to a memo the PSC had sent to Senate President Tom Beck, outlining their legislative needs and ideas with regards to providing additional authority and clarity. The commission recognized this approach might not be sufficient in view of ever rising rates, and the legislature may want to have other options to consider, such as an excess profits tax. **SEN. JOHNSON** surmised that his answer was a "half" yes, which **Mr.**

Rosquist confirmed. **SEN. JOHNSON** inquired whether the PSC had written any other rules than the ones MPC had put together and forwarded at their request in December. **Mr. Rosquist** replied that they had not, having felt that there were sufficient rules in place; MPC had been the designated default supplier for several years.

SEN. JOHNSON addressed **Mike Uda**, referring to his "soft landing approach" handout and asked if it referred to Section (3) of HB 632 where it says "such other consideration as the PSC determines are relevant, see Section (3), revising 69-8-210". **Mike Uda** confirmed this. **SEN. JOHNSON** inquired whether that took out this particular section of the law. **Mike Uda** asserted that it simply amended that section of 69-8-210. **SEN. JOHNSON** did not agree, saying that the entire section was struck, and asked if he would still support HB 632 with that language eliminated. **Mike Uda** affirmed that he would. **SEN. JOHNSON** asked what was used to determine relevancy in that section, and **Mike Uda** replied that part of the confusion and the reason why this was being addressed now was that no one contemplated this problem in 1997, that the wholesale market would "go nuts", and the utilities would create a situation that put customers at risk. The confusion with 69-8-210 was that it talked about either cost-based affiliate contracts, or market-based contracts, and this was struck because it made no difference; they wanted to make it clear that the commission continued to have jurisdiction over those rates irrespective of the source of supply, until the final transition order was issued. **SEN. JOHNSON** wondered if all of this should have been a consideration in the sale/purchase of MPC's assets. **Mike Uda** replied that if he were a utility lawyer advising a client to either buy or sell these assets, knowing that this transition order was indefinite, he would advise them to make sure this was open-ended so they would not find themselves in a situation where they would have to buy high and sell low, as is happening in California. He felt it was a mistake on the part of MPC to enter into a finite 2-year contract, knowing that the commission could simply extend the transition order by two years.

SEN. JOHNSON then turned to **Greg Stricker, MRI**, and asked him if his company sold the additional leftover power into the market at the time of their closure. **Mr. Stricker** replied that at most, there would have been a day or a few hours left where they did not operate and they might have sold that unused power back. **SEN. JOHNSON** charged that according to newspaper accounts, about \$68 million were involved in that transaction. **Mr. Stricker** vehemently denied that, saying it was at most a day, and the dollar figure was perhaps \$300,000 which was more than offset by the \$120 per MW paid during the following week. **SEN. JOHNSON**

requested to see that number before the committee took executive action.

SEN. JOHNSON addressed **Tom Daubert** and wondered about his comment that HB 632 was the only bill in this session which was not punitive, and asked if he thought SB 243 was a punitive bill.

Mr. Daubert answered he did not, but felt it did not do much for large industrial customers nor did it survive, and that was why he had not considered it.

SEN. STEVE DOHERTY mentioned previous testimony with regards to the roughly 1200 irrigators on the MPC system, and, referring to the definitions, asked **John Bloomquist** how many of those irrigators used a monthly average of 1,000 kilowatt. **Mr.**

Bloomquist replied that the irrigators did not fall under that category. **SEN. DOHERTY** wondered if the agricultural community knew that this bill, in its present form, would not help them.

Mr. Bloomquist answered that they were looking down the road, when the 2002 cap is removed. **SEN. DOHERTY** maintained that it cannot establish lifeline rates for users of less than 1,000 KW.

Mr. Bloomquist asserted they knew the lifelines rates were created for the large industrials; but that they were looking beyond July 1, 2002.

SEN. DOHERTY then asked **Barry Hederich** how many irrigators used more than 1,000 KW per month. **Mr. Hederich** replied that a great majority did, because a 50 HP motor used 1,000 KW in a 24 hour period. **SEN. DOHERTY** affirmed that HB 632 would affect that sector, and **Mr. Hederich** replied with emphatic yes.

SEN. DOHERTY then asked the sponsor that if this bill was good for the large industrials and irrigators, why not simply extend the lifeline rates to Montana's small businesses as well. **REP. MOOD** claimed that it was the large industrial customers who had opted out, and the lifeline rate was being offered to help them come back into the system and be established under that rate. With regards to the irrigators, it would not make any difference if they were under or over 1,000 KW, because if they were over 1,000 KW and had continued in the system, their rate was 22.25; if they had opted out, they would get the lifeline rate.

SEN. MIKE TAYLOR wondered, with regards to the \$69 million loss MPC said they would incur if this bill passed, if we would let them go broke, or declare bankruptcy. **Mike Uda** explained that this \$69 million only applies if PPL Montana wins the preemption argument; otherwise, it did not get the default supplier at all. Assuming that PPL Montana was able to prevail under state and federal law, his response was that they are only talking about

the lifeline rate, and his group had indicated a willingness to discuss how this would be paid back over time. He went on to describe how bankruptcy laws worked with reference to the California situation. He stressed that this bill did not pose that threat; the only threat might be the PSC's assertion of jurisdiction. **SEN. TAYLOR** wondered if he understood correctly, that the industrial producers could come up eventually with the money to make up the \$69 million windfall, and would that include the interest incurred. **Mike Uda** cautioned that he did not have his client's approval but he would have to answer that it would include the interest; this would be amortized over time which would allow them to come back on the system with its inherent economic benefits. **SEN. TAYLOR** wanted to know if he thought this bill sent a message that Montana restricted other generators' ability to do business. **Mike Uda** replied that he could not speak for those generators, but that this bill targeted a specific situation where someone bought the generation assets of a totally integrated utility whereby they had an obligation to serve, and that obligation did not evaporate. The second point he made was that if we were unable to get this situation under control, we had to worry whether there would be any businesses left in the state, and not what message we were sending to outside businesses.

{Tape : 4; Side : A}

SEN. RYAN asked **Mr. Walsh** if a lifeline rate of 4.3 cents would be sufficient for his company to resume operations. **Mr. Walsh** replied that it was close to what they needed; their preference would be 150% of the MPC buy-back contract price, but it also hinged on world market prices for the commodities they produced. **SEN. RYAN** wondered how long a contract would they be willing to sign if this lifeline rate is established. **Mr. Walsh** stated that currently, there are 16 years worth of reserves they could mine with the potential of an additional ten years after that, so they would be looking for a long-term contract.

SEN. MACK COLE asked if his customers would be willing to bond to make this more equitable should there be any shortfalls. **Mike Uda** said he did not know at this point.

Closing by Sponsor:

REP. MOOD closed on HB 632 by saying the length of this hearing was a good indication of the importance and significance of this issue to the state of Montana. He addressed the suggested amendment with regards to "green power", with sustainable resources defined as wind, solar, or geothermal, and countered that for over 15 years, he had been trying to convince these groups that wood is in fact a renewable resource, and unless they

were willing to add wood, he would not agree to any such amendment. With regards to the amendments proposed by MPC and NorthWestern, he asserted that he was told by members of the Legislative Services that these either destroyed the effectiveness of the lifeline rates or admitted some vulnerability to potential lawsuits in terms of continuing the PSC's authority over generation in this state, and maintained that he would oppose any amendments which compromised either one of these two issues. He charged that he did not want to make PPL Montana the bad guy; the amount of money involved here was enormous, and they were trying to protect their ability to go into the market and make that kind of money. He conceded that they had that obligation, he would not act any differently, but suggested that everyone in this room and every business in the state was at risk for extreme hardship as a result of what was happening in this market. He asserted that he did not bring forth HB 632 for the Dennis Washingtons of this world but for the people who testified here today, and their employees who depended upon making a decent living for themselves and their families. He went on to say that pursuant to section 69-8-403 of the code, at the point that there was a final transition order in place, the commission may not regulate electricity supply but the obverse was true: if there was not a transition order in place, they may regulate the supply of electricity. He maintained that this language would have been inversed had there been any notion in 1997 that we would be in the situation we are in now. There was no anticipation of the effect that the lack of new generation capacity would have on the market; and that is the reason why that language was not more explicit in its assertion with regards to the PSC's authority. He then quoted from the same statute: "The Commission shall decide if there is a workable competition in the electricity supply market by determining whether competition is sufficient to inhibit monopoly pricing or anti-competitive leadership". This indicated to him that there was some anticipation that maybe something could go wrong, and in that case we had to give the PSC the ability to continue to regulate electricity. He submitted that the provision on the bottom of page 9 of the bill where it said "A sale by a public utility of its generation assets to a successor or assignee does not relieve either the public utility or its successor or assignee of the obligation to serve customers at just and reasonable rates" was key to this discussion. He maintained that without this legislation, PPL Montana had the ability to make billions in profit over the next couple of years; with this language in place, we are saying they are entitled to a just and reasonable profit. Electricity is such an elemental part of society that it gives the states primary policing power to control the price of electricity, according to a Supreme Court ruling in an Arkansas case. He closed by saying that without electricity, our culture cannot survive.

HEARING ON HB 643

Sponsor: REP. CAROL JUNEAU, HD 85, BROWNING

Proponents: REP. FRANK SMITH, HD 98, POPLAR
SEN. GLENN ROUSH, SD 43, CUT BANK
REP. NORMA BIXBY, HD 5, LAME DEER
SEN. GERALD PEASE, SD 3, LODGE GRASS
George Ochensky, MT/WY Tribal Leaders Council
Gene Fenderson, MJH & HC
Debbie Smith, Natural Resources Defense Council,
and RNP
Patti Keebler, MT AFL-CIO
Patrick Judge, MEIC
Matthew Leow, MontPIRG

Opponents: Donald Steinman, FDR PAC

Opening Statement by Sponsor:

REP. CAROL JUNEAU, HD 85, BROWNING, opened by saying that HB 643 was designed to create wind energy development in Montana's Blackfeet and Fort Peck reservations, primarily, because they contain some of the prime wind energy generating sites. She submitted **EXHIBIT(ens74a07)**, a fact sheet about wind power, as well as **EXHIBIT(ens74a08)** and **EXHIBIT(ens74a09)**, written testimony from Dennis Fitzpatrick and Ervin Carlson who could not attend this hearing. She told the committee that construction of wind energy generating plants on Montana's Indian reservations, where unemployment ranges between 50% and 60% and higher, could help revive their economy, attract industry as well as help solve regional and state energy needs since it would require substantial outside capital investment. The bill provided financial incentives to encourage the construction of clean, renewable wind energy farms. The Blackfeet site is presently generating wind energy and is seeking to expand, and the Fort Peck site could potentially generate enough electricity to supply the city of Billings. She clarified that the bill was amended to include only new generation in the tax exemptions.

Proponents' Testimony:

REP. FRANK SMITH, HD 98, POPLAR, submitted **EXHIBIT(ens74a10)**, testimony from Roxanne Gorneau, and stated that this was an

important bill to the reservations because they were excluded from the federal production tax incentives, and the provisions herein would make for a level playing field. Any capital investment for such energy farms would be exempt from state taxes, making it attractive to investors.

SEN. GLENN ROUSH, SD 43, CUT BANK, reiterated that this proposal was very important to the Blackfeet and Fort Peck reservations. He stated that there was a proposal to construct a 30 to 35 megawatt commercial wind farm on the Blackfeet tribal trust property; these turbines would produce about 1,000 megawatts each at maximum capacity. There was also a full EIS under way, and the construction start-up time was spring of 2002. He pointed to the tribal college and the fact that Votech courses are being offered there which would help make locals employable as stipulated in the bill. In closing, he pointed to the fiscal note of 3/24/01 in which the assumptions are outlined.

{Tape : 4; Side : B}

REP. NORMA BIXBY, HD 5, LAME DEER, stated that her district encompasses both the Cheyenne and the Crow reservations, and the need for economic development in that region was great. She felt that HB 643 provided not only for a new start for self-determination but also for additional and much needed energy. She stressed that this could not be accomplished, though, without legislative assistance and endorsement.

SEN. GERALD PEASE, SD 3, LODGE GRASS, also rose in support of HB 643, concurring with previous testimony, and added that MPC had recently announced that power rates maybe tripling within the next three to four years which would make passage of the bills heard this day all the more important.

George Ochensky, MT/WY Tribal Leaders Council, stood in support of HB 643 because he felt it provided a tremendous opportunity for both the state and the tribes.

Gene Fenderson, MJH&HC, agreed with previous testimony and asked the committee's support.

Debbie Smith, Natural Resources Defense Council, and RNP, stated that her membership included the corporation who was the developer working with the siting company for the Blackfeet wind project. She stated that HB 643 expands already existing property and income tax credits for wind generation projects, and it allows the developers to qualify for economic development bonds. To illustrate important this bill was, she pointed to Exhibit (7), the fact sheet. She went on to say that the price of wind generated power was cheap compared with coal and natural gas pegged at 4 cents to 6 cents per KW hour, and that the

Blackfeet system had existing transmission capacity of at least a 25 megawatt size to allow power to be transmitted into the BPA service territory. Lastly, she pointed out that it was estimated that wind power projects create three times the number of jobs than those depending on fossil fuel plants.

Patti Keebler, MT AFL-CIO, stated that her organization supported the development of alternative energy resources, and lauded HB 643 for providing power to the grid as well as creating good paying long-term jobs to economically depressed areas.

Patrick Judge, MEIC, claimed that the environmental advantages of renewable energy generation were manifold because there were no emissions and no water requirements, and the resource was independent of global fluctuations and availability of fuels.

Matthew Leow, MontPIRG, also rose in support of HB 643 because it would create a new industry that not only provided jobs but also had virtually no impact on the environment.

Opponents' Testimony:

Donald Steinman, FDR PAC, gave long and drawn-out testimony, lamenting that deregulation was destroying the economy, no matter what was done to increase production. He felt re-regulation by government was needed to secure the welfare of its people; under deregulation, profiteers were bilking them. He was adamant about the fact that the legislators were mandated by the people of Montana to secure their welfare which, in this case, meant re-regulation of the power industry. Lastly, he handed out **EXHIBIT (ens74a11)**, a pamphlet.

Gene Walborn, DOR, stepped forward, saying he was available for questions.

Questions from Committee Members and Responses:

SEN. TOM ZOOK asked if this bill allowed for bonds to be financed by the state. **Gene Walborn** was not certain and referred the question to the sponsor. **REP. JUNEAU** replied that it did not create any new bonding programs and did not obligate the state for any bonding debt. **SEN. ZOOK** inquired who, then, would pay for any bonds that might be issued. **REP. JUNEAU** deferred the question to **Todd Everts**. **Todd Everts** explained that this bonding authority was for two existing programs, namely the economic development bonds which would allow the facilities defined in HB 643 to come in under that provision, and the industrial development bonding. **SEN. ZOOK** asked who serviced the debt for these bonds. **Todd Everts** said he would have to look that up.

SEN. ZOOK felt it was important to know that before subsidizing power that might be sold out of state.

{Tape : 5; Side A}

SEN. ALVIN ELLIS asked the sponsor whether this bill was limited to Indian reservation. **REP. JUNEAU** confirmed this. **SEN. ELLIS** wondered why limit this to the reservations if it was good policy for the state of Montana. **REP. JUNEAU** thought the committee could consider changing that; they had looked at the reservations because of the potential for wind energy on especially the Blackfeet reservation as well as their need for economic development. **SEN. ELLIS** felt that areas in his district had potentially good sites for this kind of power generation, and asked if the sponsor had any objections to broadening the scope of her bill. **REP. JUNEAU** still felt that the areas where the need for economic stimulus was so great should be targeted primarily, but if a similar situation existed in the senator's district, that could be considered. **SEN. ELLIS** referred to the bill's limitation of installations of 5 megawatts or larger, and wondered that if an irrigator would want to erect a facility, he would not be entitled to the tax incentives, or was she more flexible in that area. **REP. JUNEAU** replied she did not want to appear inflexible but the strength of the bill focused on the areas where economic development was needed, and added that in some neighboring states, incentive were also given to smaller plants which could be looked at here as well. She also referred to a bill by **Sen. Cobb** that dealt with this issue, SB 6.

SEN. ELLIS then asked **Debbie Smith** to give a general reply to his previous questions. **Debbie Smith** admitted that it would be beneficial to expand the tax incentives for this generation to other parts of the state and to smaller generators as well. She, too, referred to **Sen. Cobb's** bill dealing with incentives for alternative energy generation and credits for smaller generators. **SEN. ELLIS** wondered if **Sen. Cobb's** bill included all of the tax credits this bill did. **Debbie Smith** admitted she did not remember because of the sheer number of energy bill being considered.

SEN. MIKE TAYLOR asked **SEN. ELLIS** if any of this credit applied also to energy sold in the state. **SEN. ELLIS** replied that in this bill, the tax credits also applied to energy sold out of state but he was not sure if **Sen. Cobb's** bill had the same provisions. **SEN. TAYLOR** asked the same question of **Debbie Smith**, who answered that some of the power from the reservation will be sold in state. BPA has contracts with a number of cooperatives to supply them with power. **SEN. TAYLOR** asked if the bill

guaranteed that some of the generation be sold in state. **Ms. Smith** did not think that this bill specified where the power would be sold to.

SEN. TAYLOR then inquired of **SEN. ROUSH** if Glacier Electric, for instance, would be able to get a reasonable rate from this generation which they support. **SEN. ROUSH** replied that Glacier Electric will put that power into the grid system supplied by MPC and BPA as well.

SEN. MACK COLE questioned why this was limited to just two reservations. **REP. JUNEAU** repeated that it was not limited to those two areas; she used these specifically because they were in her and **REP. SMITH's** districts. **SEN. COLE** wondered why there was a tie-in to Indian employment; he thought this would be taken care of under TARO. **REP. JUNEAU** wanted to address this specifically to ensure that there was guidance given to the investors with regards to qualifying for the tax credits; this was meant to promote employment on the reservations. **SEN. COLE** asked if there was any financial benefit for the local schools in way of taxes. **REP. JUNEAU** deferred this question to the Department of Revenue. **Gene Walborn** thought there was not because it involved state general fund money.

Closing by Sponsor:

REP. JUNEAU closed on HB 643, saying it not only benefitted the local communities immediately but would also serve to attract new business because of the available power supply.

Note: The committee adjourned at this point and reconvened at about 2:50 p.m. because of the floor session.

HEARING ON HB 645

Sponsor: **REP. JEFF MANGAN, HD 45, GREAT FALLS**

Proponents: **Alec Hanson, League of Cities and Towns**
Bob Hogel, School Board Association
Patti Keebler, MT AFL-CIO
Tom Daubert, Ash Grove Cement Co.
Pat Corcoran, MPC

Opponents: **Jerome Anderson, PPL Montana**
Debbie Smith, Natural Resources Defense Council
Donald Steinman, FDR PAC

Opening Statement by Sponsor:

REP. JEFF MANGAN, HD 45, GREAT FALLS, opened by saying HB 645 was designed to implement an energy power pool which was a concept promoted by the Northwest Power Planning Council and the Governor's Advisory Council on Energy, and was currently being reviewed by the PSC. He asserted that this concept addressed the issues of supply and cost of energy by providing financial incentives for reducing energy consumption; the electricity freed up would be sold to large businesses through a power pool administered by the distribution company, at below market prices. He claimed that HB 645 would create a market for energy efficiency, result in conservation, and help sellers and buyers to trade electricity, thereby helping industrial customers; it would also help reduce budgets for schools, universities, and state agencies. Lastly, he submitted **EXHIBIT (ens74a12)**, a set of amendments proposed by him.

Proponents' Testimony:

Alec Hanson, League of Cities and Towns, stated he was also a member of the Governor's Advisory Council on Electricity Prices, and lauded this bill for providing incentives to conserve energy and additional resources for industries at risk of closure or work force reduction through the creation of a power pool. He wanted it made clear that the PSC had the authority to set the trigger amount, and he felt that the legislature needed to send a strong message that this was a good idea and needed to be done. He was certain that cities could save up to 20% of their energy use by astute management practices which would provide them with additional cash as well as adding power to the pool.

Bob Hogel, MT School Board Association, rose in support of HB 645, saying he welcomed the amendments proposed by the sponsor and the idea of energy conservation. He added that there were a number of school districts actively seeking to reduce their energy consumption, and this bill would allow them to participate under the provisions of this bill.

Patti Keebler, MT AFL-CIO, also stood in support of HB 645 as a tool to help solve the current energy crisis.

Tom Daubert, Ash Grove Cement Co, agreed with previous testimony, maintaining that this proposal was valuable in that it was a positive reinforcement geared to solving a big problem.

Pat Corcoran, MPC, proclaimed his company's support for HB 645 because it provided incentives for energy conservation, lowered cost to the consumers and made more power available. With regards to MPC being the distribution service provider, a few modifications needed to be made to enable them to administer this

program, but they would make every effort to get these in place as quickly as they could.

{Tape : 5; Side : B}

Opponents' Testimony:

Jerome Anderson, PPL Montana, stated he was part proponent, part opponent on HB 645; he believed in the concept of a power pool, and PPL Montana had solicited the establishment of a voluntary power pool throughout the Northwest for industrials who wanted power at a reduced price. A subsequent meeting by various groups, though, revealed that none of them were willing to provide power to such a pool. In the interest of implementation, PPL Montana then offered 20 megawatts of power at \$35 per MW to be administered by the PSC or the governor's office, and to date, no one else has stepped up to participate in this pool. He opposed HB 645, however, because the PSC would require and dictate participation in the pool, as well as regulate it. He also felt that this bill nullified their contract with MPC and submitted them to regulation by the PSC. He also took offense at **Pat Corcoran's** generosity with PPL Montana's power; he went on to ask why MPC would not provide power to this pool from power they were generating at Colstrip. Lastly, he voiced concern that this would allow some people to avoid some of the requirements of HB 632.

Debbie Smith, Natural Resources Defense Council, and RNP, submitted **EXHIBIT (ens74a13)**, a set of amendments drafted by her organization, saying they were essential to the success of this bill. She charged that "conservation efforts" must means power saved by the customer, and not by shifting demand from the utility to a non-utility supply source. The second change addressed who pays for the incentives, and she made it clear that it would have to be the large customers who had opted out of the MPC system and now were using the pool, and not the ones who are contributing to the energy pool. She closed by saying if these two amendments were incorporated into the bill, they would strongly support it.

Donald Steinman, FDR PAC, strongly opposed the concept of this bill, calling it a form of gambling because the resale prices would be arbitrary. He also did not like the fact that no new generation facilities have been built in quite some time, and again pointed to the situation in California, speaking to deregulation per se, until **VICE CHAIRMAN JOHNSON** admonished him to stay on the subject of this bill. **Mr. Steinman** drew some more comparisons with California, and then stated there was nothing in this bill to prevent the power companies to sell the power from these pools out of state.

Informational Testimony:

John Hines, Northwest Power Planning Council stated he was available for questions.

Dave Wheelihan, Gen. Mgr., MT Electric Co-operative Assn., sought to provide some information on the rural electric co-operative exemption in HB 645. He informed the members that they do not own their own generation with the exception of two hydro-facilities in northwestern Montana; they buy all of their power from either the federal government or from out of state generators, and he added that these contracts are just for the power they consume. If there was a savings through conservation it would be benchmarked against a use average, and if they were required to put that into the power pool, they would actually have to buy power on the open market to put into the pool, and that would have an adverse effect on their rates; thus, the exemption.

Questions from Committee Members and Responses:

SEN. MIKE HALLIGAN asked the sponsor to address the amendments proposed by **Debbie Smith**. **REP. MANGAN** stated that **Ms. Smith** had shared some of her amendments with him beforehand and added that they were not adopted in the House, he wanted to present them to the Senate committee; some of them had come out of the governor's office and contained ideas they wanted to address.

SEN. RYAN asked the sponsor if the term "weather normalized" meant that weather would be taken into consideration when determining if someone qualified for the conservation credit.

REP. MANGAN deferred the question to **Mr. Hines**, who explained that because of the temperature difference in any given month, from one year to the next, it was impossible to gauge actual energy conservation, and the weather factor was taken out of the equation. **SEN. RYAN** referred to a recently passed bill which gave the governor power in emergency situation, one of which was energy conservation; he asked if this bill fit in with that. **Mr. Hines** replied it could be one avenue, but that another avenue was the executive order requiring a 10% savings from all state buildings; the energy saved could also go into the power pool.

SEN. TAYLOR wondered why not all suppliers did or would participate in this program. **Mr. Hines** replied that this power supply concept worked with regards to energy conservation because there were significant price differences between what some people were paying and the market price; to illustrate his point, he told how he was paying 2.25 cents per kilowatt hour; if the power pool were to entice him to conserve energy by offering 4 cents

per kilowatt hour, he would do that rather than go through the typical conservation/exhortation concept. By contrast, industrial customers would have to see a much higher rate where they would be willing to buy power out of the power pool at a rate higher than a residential customer, and they would still get a benefit because they could get a rate below market. Customers other than MPC's were not seeing that high market rate, so it would not provide them any incentive.

SEN. TOM ZOOK asked if he thought **Debbie Smith's** amendments would fit into the bill. **Mr. Hines** felt that the second amendment did.

SEN. WALT MCNUTT made reference to the first amendment as per her Exhibit (13) and asked why she was opposed to Section (1) of the bill. **Ms. Smith** explained that she was only opposed to paying incentives to customers to reduce their load by shifting their use from the utility to another generating source, because that could be a less environmentally friendly one. She added that this power pool would not be large enough to satisfy the state's power needs, it would just be a small portion.

Closing by Sponsor:

REP. MANGAN closed on HB 645 by saying he would continue to work on it with the help from legal counsel because he felt offering incentives for energy conservation was an important part of the total energy legislation being offered this session.

{Tape : 6; Side : A}

HEARING ON HB 646

Sponsor: REP. GEORGE GOLIE, HD 44, GREAT FALLS

Proponents: Doug Hardy, MT Electric Cooperatives
Gene Fenderson, MJH & HC
Patti Keebler, MT AFL-CIO
Jerry Driscoll, Building Traders Assn.
Donald Steinman, FDR PAC

Opponents: Bob Gilbert, City of Colstrip
Jerome Anderson, PPL Montana
Jim Mockler, MT Coal Council
Debbie Smith, Natural Resources Defense Council

Opening Statement by Sponsor:

REP. GEORGE GOLIE, HD 44, GREAT FALLS, submitted
EXHIBIT(ens74a14), his written opening statement.

Proponents' Testimony:

Doug Hardy, MT Electric Cooperatives, submitted
EXHIBIT(ens74a15), his written testimony.

Gene Fenderson, MJH & HC, also rose in support of HB 646, calling it one of the most important of the session because it dealt with the long-term outlook. He concurred with previous testimony that prices will come down over the next few years with increased competition, and stated that future power needs would be tremendous, and that was why new generation was so important.

Patti Keebler, MT AFL-CIO, proclaimed support for HB 646 because it encouraged new power generation, with the majority to be sold at cost-based rates to Montanans.

Jerry Driscoll, MT State Building Trades, charged that even though some people opposed the tax incentives as provided in this bill, the money would flow back to the state's rate payers from the 25% of power sold out of state at market-based rates.

Donald Steinman, FDR PAC, rose in support of HB 646, concurring with previous testimony.

Opponents' Testimony:

Bob Gilbert, City of Colstrip, stated that they did not oppose the idea of additional generating plants but saw a problem with the state agreeing to use county money in providing tax breaks to industry. The impact fees provided for in the bill were not sufficient to offset the loss. He suggested a change in law from the current five year period for tax incentives to ten years. He maintained that if this 3,000 megawatt plant was to be built in Billings or Butte, those cities' tax base would be able to absorb some of the cost whereas a rural area could not, because in addition, there was no infrastructure to deal with the influx of workers. He urged the committee to reconsider the tax language in HB 646.

Jerome Anderson,, PPL Montana, was also concerned that HB 646 was discriminatory in nature, giving a great competitive advantage to a power plant with the opportunity to pay for itself by way of the tax obligations saved through this bill. He voiced concern

over the craftsmanship that had gone into drafting these energy bills.

Jim Mockler, MT Coal Council, stated he had always been in support of bills dealing with building additional power plants, because of the jobs and the tax base they would provide, and HB 646 provided new jobs but no tax base. He felt that SB 508 was amendable, and, at the very least, 50% of the tax money should go back to the counties; the schools also stood to lose about \$33 million over the ten year period.

Debbie Smith, Natural Resources Defense Council, stated that she appreciated the low threshold for new power plants to qualify for tax incentives, including solar, geothermal and biomass powered plants which are not economically competitive. She felt, though, that the bill was too broad, stating that conventional fossil-fueled power plants do not need tax incentives from tax payers; she referred to page 2, lines 3 and 4 of the bill and charged that the risk of developing power plants should be on the developer, not the customers. She maintained that the legislature should not direct where a company's profits should go, and that this provision should be taken out or limited to electric cooperatives who operate under a different system.

{Tape : 6; Side : B}

Questions from Committee Members and Responses:

SEN. ELLIS referred to **Bob Gilbert's** claim that this bill was too harsh on Rosebud county with respect to the tax incentives; he claimed that he had corroborating information saying that if the Colstrip school district lost 81% of their property in both the elementary and high school districts, they still would not be entitled to the GTB supplement because of the wealth of the district. He wondered whether they needed this tax money long term in light of the fact that there were impact fees paid up front. **Bob Gilbert** replied that were the plant to be built in Forsythe or in Ashland, they would need the money because they did not have the tax base that Colstrip has. Colstrip was wealthy, but not Rosebud County, and it contributed \$18 million per year to the school equalization fund which also went to other counties' schools.

SEN. ROYAL JOHNSON referred to page 1, line 22 of the bill and asked the sponsor if any other industry in Montana enjoyed a ten year tax break. **REP. GEORGE GOLIE** said he did not. **SEN. JOHNSON** repeated that other than a proposed power plant, no other plant has been given this kind of a tax break, and **REP. GOLIE** confirmed this.

SEN. JOHNSON directed the question to **Doug Hardy** who answered that there were two smaller scale industries who enjoyed this type of incentive. He reminded the committee that this 10-year break originally was meant to be a five-year break, but since construction of a plant would take that long, they set the start of the time period with the ground breaking. This means that for the first few years, there was not much that was taxable; the benefit would be enjoyed when it was built and in production.

SEN. JOHNSON wondered if he thought it fair to go to a three-year break after it was built, or institute a graduated system. He also asked whether NorthWestern had asked for a tax break for their proposed plant. **Doug Hardy** was not sure what NorthWestern had asked for; at its inception, a tax break was contemplated from the point of production, but that was deemed a hardship; that was when the groundbreaking idea arose. He felt that the three year break after construction was a policy question, and that Montanans were getting the benefit if the rates remained cost-based on the 75%. **SEN. JOHNSON** ascertained that he had no objections to a change. **Doug Hardy** replied that his main concern was that enough of an incentive was offered to cause someone to build a power plant to give a cost-based option to the rate payers.

SEN. RYAN asked **Mr. Hardy** if they bought any of their power from Bonneville. **Mr. Hardy** answered that they did buy all of their power from Central Montana Power Cooperative, as do 13 other cooperatives, and one of their resources is Bonneville. **SEN. RYAN** referred to the term "cost based" in his testimony, and, since they were a cooperative, wondered if they passed on to their customers what it took for them to buy the power plus the cost of distribution, rather than the cost of generation. **Mr. Hardy** explained that they have a bundled rate. **SEN. RYAN** then asked if it had cost Bonneville more to run water through their dams recently than it had in the past. **Mr. Hardy** replied that he did not know much about their operational cost; what had cost them more this year was what they had to buy at market because we had decreased what they have been able to run through the dams; this was due to the salmon issue. **SEN. RYAN** then asked if his cooperative's cost had gone up as a result of this. **Mr. Hardy** answered that they had not gone up yet; their contract with BPA contained a cost recovery adjustment provision which allowed a change in rates either way between rate periods, and they have been steady.

SEN. TOM ZOOK asked if a 3 megawatt facility was economical. **Jim Mockler** thought that it could only be a diesel, windmill or gas fired plant since it would not be economical to build a coal fired 3 megawatt plant.

SEN. TAYLOR asked that if a plant costs \$500 million for 500 megawatts, how long could it operate. **Mr. Mockler** estimated 40 to 50 years. **SEN. TAYLOR** then asked how many people it would employ, and **Mr. Mockler** guessed about 150. When asked about the average salary, **Mr. Mockler** replied that at Colstrip, it was about \$60,000. **SEN. TAYLOR** was concerned about the local impact and calculated that 1/2% up front would provide \$2.5 million for infrastructure, with 70% going to schools and 30% to other infrastructure. He felt that the income taxes created by these jobs would offset, over ten years, the loss of the property tax credits, and asked for **Mr. Mockler's** opinion. **Mr. Mockler** agreed with his statement in as much as it concerned the state because it benefitted from the good jobs; if those plants were built in Great Falls or Billings, the impact would be nil. However, he thought it would be done in less populated areas with minimal tax base, such as Rosebud County, the benefit would not be felt for years to come.

SEN. TAYLOR then asked **Mr. Hardy** if research had been done into what other states are offering to attract generation facilities. **Mr. Hardy** had seen research done by **Dave Wheelihan** and deferred to him. **Dave Wheelihan** informed him that North Dakota was providing up to \$10 million for new generation; Wyoming had appropriated one million dollars to establish an energy commission to look into new generation; other states were gearing up but have not come as far yet. **SEN. TAYLOR** charged that if the tax base was computed out to 40 years, the first ten would be lost due to the incentives, but 30 are gained through property and income taxes. **Dave Wheelihan** stated his organization had done some tax work which he would make available but they had not computed it out for forty years.

Doug Hardy came forward and explained that a spreadsheet had been done which included the present through the ten years on an annual basis, on what it would and would not do. **SEN. TAYLOR** just wanted to see the income tax basis provided by these jobs, and **Mr. Hardy** told him he would have to get back to him on that.

Closing by Sponsor:

REP. GOLIE closed on HB 646.

HEARING ON HB 647

Sponsor: **REP. KIM GILLAN, HD 11, BILLINGS**

Proponents: **Patti Keebler, MT AFL-CIO**
 Gene Fenderson, MJH & HC

Opponents: **Jerome Anderson, PPL Montana**

Opening Statement by Sponsor:

REP. KIM GILLAN, HD 11, BILLINGS, opened by saying that HB 647 revised some laws governing electric energy, specifically dealing with some of the ambiguities of SB 390, the 1997 restructuring bill. She added that the excess profits tax portion of the original bill had been struck, and submitted **EXHIBIT (ens74a16)**, an overview. She pointed out that the changes give affirmation to the PSC in their authority to not only extend the transition period but also to have the contracts be cost-based. She asserted that under this bill's definition of "affiliate supplier", PPL Montana would be included. Lastly, it provided a mechanism whereby customers who have left the grid after deregulation would be served by the default supplier under the condition that they could not leave again.

{Tape : 7; Side : A}

Proponents' Testimony:

Patti Keebler, MT AFL-CIO, stood in support of HB 647, saying it offered a cushion for Montana's consumers.

Gene Fenderson, MJH&HC, also rose in support of HB 647 because it allowed industrials to come back on the system and helped put an end to the plant closures.

Opponents' Testimony:

Jerome Anderson, PPL Montana, rose in opposition of HB 647 for the same reasons he opposed the previous five.

Questions from Committee Members and Responses:

SEN. JOHNSON asked the sponsor what the criteria were for extending the time frame to 2005. **REP. GILLAN** explained that in looking at 69-8-210, the original bill talked about a three year time frame, and she chose the same. **SEN. JOHNSON** asked if she thought 68-9-210 was an important law to keep on the books. **REP. GILLAN** replied that she thought if there was a way to re-regulate, she would and HB 647 was a step in that direction and, yes, she would keep that statute on the books.

SEN. ZOOK asked for clarification whether she wanted SB 390 to remain unchanged, in view of her bill's definition of affiliate supplier. **REP. GILLAN** admitted she might have given the wrong impression; "affiliate supplier" was not defined in the original bill and HB 647 provided clarification. **SEN. ZOOK** wondered if that was not self-serving. **REP. GILLAN** asserted that HB 647 lent support to the PSC trying to assert their authority to regulate prices.

SEN. JOHNSON wondered if the sponsor had any doubt with regards to PSC's assertion of authority because this was already established. **REP. GILLAN** replied that many people felt that parts of SB 390 needed some clarification, and when she drafted HB 647, she had not been familiar with the concept of SB 390 but wanted to characterize her bill as affirming the PSC's authority. **SEN. JOHNSON** asked if it could have negative impact on potential lawsuits if that authority was re-affirmed. **REP. GILLAN** stated she was not an attorney but she thought the term "affiliate supplier" in the original language needed clarification. She felt there would be litigation no matter what happened.

SEN. ZOOK asked the sponsor how she arrived at her definition of an affiliate supplier. **REP. GILLAN** stated that she had looked at other legislation and conferred with **Greg Petesch, Legal Counsel**, and chose it because it inferred that there could be a successor.

Closing by Sponsor:

REP. GILLAN closed on HB 647 and when asked, stated that **SEN. DOHERTY** would carry the bill in the senate.

ADJOURNMENT

Adjournment: 4:45 P.M.

SEN. MACK COLE, Chairman

MARION MOOD, Secretary

MC/MM

EXHIBIT (ens74aad)